

CHAPTER NO. 834

HOUSE BILL NO. 1275

By Representative Patton

Substituted for: Senate Bill No. 784

By Senator Person

AN ACT to amend Tennessee Code Annotated, Section 39-13-306, relative to custodial interference.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-306, is amended by deleting such section in its entirety and substituting instead the following:

Section 39-13-306.

(a) It is the offense of custodial interference for a natural or adoptive parent, step-parent, grandparent, brother, sister, aunt, uncle, niece, or nephew of a child younger than eighteen (18) years of age to:

(1) Remove the child from this state knowing that the removal violates a child custody determination as defined in § 36-6-205(3), the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or court order regarding the custody or care of such child;

(2) Detain the child within this state or remove the child from this state after the expiration of the non-custodial natural or adoptive parent or guardian's lawful period of visitation, with the intent to violate the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or a court order regarding the custody or care of such child;

(3) Harbor or hide the child within or outside this state, knowing that possession of the child was unlawfully obtained by another person in violation of the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or a court order; or

(4) Act as an accessory to any act prohibited by this section.

(b) It is also the offense of custodial interference for a natural or adoptive parent, step-parent, grandparent, brother, sister, aunt, uncle, niece, or nephew of an incompetent to:

(1) Remove the incompetent from this state knowing that the removal violates a temporary or permanent judgment or a court order regarding the custody or care of such incompetent;

(2) Harbor or hide the incompetent within or outside this state, knowing that possession of the incompetent was unlawfully obtained by another person in violation of a temporary or permanent judgment or a court order; or

(3) Act as an accessory to any act prohibited by this section.

(c) It is a defense to custodial interference:

(1) That the person who removed the child or incompetent reasonably believed that at the time the child or incompetent was removed, the failure to remove the child or incompetent would have resulted in a clear and present danger to the health, safety, or welfare of the child or incompetent; or

(2) That the individual detained or moved in contravention of the rightful custody of a mother as defined in § 36-2-303, or of the order of custody or care, was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.

(d) If conduct that is in violation of this section is also a violation of § 39-13-304 or § 39-13-305(a)(1), (a)(3), or (a)(4), the offense may be prosecuted under any of the applicable statutes.

(e) Custodial interference is a Class E felony unless the person taken from lawful custody is returned voluntarily by the defendant, in which case custodial interference is a Class A misdemeanor.

SECTION 2. This act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: May 20, 2004


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 8th day of June 2004


PHIL BREDESEN, GOVERNOR